

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CHARLES O. ANYADIKE,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

B236740

(Los Angeles County  
Super. Ct. No. BC408752)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Robert Leslie Hess, Judge. Affirmed.

Law Office of Audrey Y. Ripley and Audrey Y. Ripley for Plaintiff and Appellant.

Schuler, Brown & Ekizian, Jack M. Schuler, and Linda Diane Anderson for  
Defendant and Respondent.

---

Plaintiff and appellant Charles O. Anyadike brought this action against his employer, defendant County of Los Angeles, alleging failure to promote (1) because of his race, and (2) in retaliation against him for complaining of alleged preselection of another employee for the position plaintiff sought. The matter proceeded to trial, and the jury found in favor of plaintiff. Defendant filed two posttrial motions, one for judgment notwithstanding the verdict (JNOV) and one for a new trial. The trial court granted both of defendants' posttrial motions, and plaintiff appeals.

We agree with the trial court that plaintiff failed to produce any evidence that defendant's decision not to promote plaintiff was the result of racial discrimination or that it was in retaliation for plaintiff's lodging of a grievance. Accordingly, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *Factual Background*

Plaintiff has been employed by defendant's Department of Health Services as a stationary engineer II (SEII) since December 1997. Prior to his employment, plaintiff obtained a degree in mechanical engineering and took some trade courses for enhancement.

#### Plaintiff applies for a promotion

On August 24, 2006, a bulletin was posted for the position of assistant chief stationary engineer. Plaintiff submitted an application for this position.

On November 20, 2006, plaintiff was sent a letter informing him of his examination results; he received a score of 100, placing him in band one.

#### Plaintiff files a grievance

On July 22, 2007, plaintiff filed a grievance alleging that SEII James Van Zuilen (Van Zuilen), who is Caucasian, was being trained out of class as assistant chief engineer.<sup>1</sup> The grievance was denied at the first level by plaintiff's supervisor, assistant

---

<sup>1</sup> According to plaintiff, Chief Stationary Engineer Jose Arturo Mendoza (Mendoza) had put Van Zuilen in that position.

chief engineer Rita Miles (Miles), who is African-American, and at the second level by manager II, building and crafts, Linwood Casey (Casey), who is also African-American.

#### Performance reviews

Plaintiff received performance reviews about once a year. In all but the first review, covering year one of his employment, plaintiff received a “very good” overall rating, until Mendoza came into his chain of command in 2005. When Mendoza took over, plaintiff received a “competent” rating.

#### Report writing

According to Miles, plaintiff’s reports were “really substandard.” In contrast, Sajid Yerunkar’s (Yerunkar) reports were “thorough and concise.”

#### Interview process

On August 22, 2007, plaintiff was interviewed for the assistant engineer position, along with the other top band one candidates: Juan Andres (who is Filipino), Van Zuilen, and Yerunkar (who is East Indian). The interviewers were manager II, facilities, operations and crafts John Kelly (who is Caucasian); Mendoza (who is Hispanic); and Casey. It was necessary and appropriate for Mendoza to serve on the interview panel because the successful candidate would work under his supervision. Yerunkar received the highest scores from all three interviewers and was the unanimous choice of the panel.

#### Yerunkar is selected for the promotion

Following the interviews, plaintiff was denied the position. Yerunkar was selected.

#### *Procedural Background*

Plaintiff initiated this action on March 3, 2009. His complaint alleges causes of action for discriminatory failure to promote and retaliatory failure to promote.

#### Defendant’s Motion for Nonsuit

The matter proceeded to a jury trial on May 17, 2011. Following plaintiff’s presentation of evidence, defendant filed a motion for nonsuit. The trial court entertained lengthy oral argument on defendant’s motion. At one point, when discussing defendant’s motivation for failing to promote plaintiff, the trial court asked plaintiff’s counsel: “What

do we have that says anything is race other than—other than your client happens to be Black? What do we have that says race other than that your client is Black?” Plaintiff’s counsel responded: “We don’t have to have anything that says race. All we have to do is show they’re not telling the truth in other areas.” The trial court followed up: “No, no, no. You don’t have to have a scintilla of evidence that suggest it’s race,” to which plaintiff’s counsel stated, “No. We have to show that the reason that they give for taking the adverse action was one that was untrue.” After further discussion, the trial court noted the “tremendous gaps” in plaintiff’s case, summarizing plaintiff’s theory as: “That’s like saying my guy was Black and he wasn’t promoted; therefore, I made my prima facie case. That’s what you have.”

Despite its “severe reservations,” ultimately the trial court denied defendant’s motion for nonsuit, commenting that it had “to stretch a point to say that [there was] a triable issue in this case.”

#### Jury Verdict for Plaintiff

Thereafter, defendant presented its case; counsel offered closing argument; and the jury was instructed. Following deliberations, the jury returned a verdict in favor of plaintiff, awarding plaintiff nearly \$40,000 in damages.

#### Defendant’s Successful Posttrial Motions

Defendant promptly moved for JNOV and a new trial. Plaintiff opposed defendant’s posttrial motions.

As with defendant’s motion for nonsuit, the trial court heard lengthy oral argument on defendant’s posttrial motions. Preliminarily, the trial court noted that it “was troubled by the lack of evidence that suggested that the selection of Mr. Yerunkar over [plaintiff] was motivated by something improper.” Counsel and the trial court discussed the issues tried, with the trial court summarizing plaintiff’s claim as follows: “[Plaintiff] should have been promoted, and the reason that he was . . . not promoted [was] based on his race, and based on retaliation for claiming racial discrimination.” But, during their conversation, it became clear to the trial court that there was no evidence of racial discrimination. Certainly, plaintiff perceived himself as the more qualified candidate,

and the only reason that could possibly explain the denial of the promotion was plaintiff's belief that he was the victim of discrimination. While plaintiff's counsel used phrases like "the totality of the circumstances . . . point[] to the fact that it is race discrimination," the trial court found that there was no evidence of any pretext for race discrimination in connection with defendant's decision not to promote plaintiff.

Ultimately, the trial court granted defendant's motion for JNOV. It reasoned: "There is no substantial evidence that the selection of Mr. Yerunkar rather than [plaintiff] was motivated by [plaintiff's] race. [¶] Although [plaintiff] does not acknowledge it, Mr. Yerunkar had long experience in running pertinent plants including . . . supervisor experience [plaintiff] lacked. [¶] He was perceived by the first level supervisor Miss Miles who was African American to be superior to [plaintiff] in report writing. [¶] All three raters at the oral interview scored Mr. Yerunkar over [plaintiff] although one of them was African American, and none shared Mr. Yerunkar's ethnicity. [¶] The evidence of discrimination based on race was so flimsy as to amount to nothing more than the most tenuous of inferences and is innuendo. [¶] There is no substantial evidence to support the verdict of liability, and the defendant is entitled [to judgment.] [S]hould the court of appeals disagree the court finds the overwhelming weight of the evidence to have been against liability. [¶] The court is convinced from the entire record that the jury should have reached a different decision, and defendant is entitled to a new trial should [JNOV] not be sustained."

The trial court further clarified that its order granting JNOV included plaintiff's retaliation claim as well.

#### Judgment and Appeal

Judgment was entered, and plaintiff's timely appeal ensued.

### **DISCUSSION**

#### *I. Standard of Review*

A trial court may properly grant a JNOV only if there is no substantial evidence to support the verdict. (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 877.) The trial court must not reweigh the evidence or judge the credibility of witnesses, and it

must view the evidence in the light most favorable to the party that secured the verdict. (*Ibid.*)

We apply the same standard of review. In reviewing an order denying or granting a JNOV, this court will ordinarily view the evidence in the light most favorable to the jury's verdict and consider whether there is any substantial evidence, contradicted or uncontradicted, to support it. (*Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 284 [review of order granting JNOV]; *Shapiro v. Prudential Property & Casualty Co.* (1997) 52 Cal.App.4th 722, 730 [denial of JNOV].) In other words, we determine whether the plaintiff proved every element of his causes of action. (*Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 703.)

With these principles in mind, we turn to the contentions raised by plaintiff, namely, whether the trial court properly granted defendant's request for a JNOV on plaintiff's claims for racial discrimination and retaliation.

## II. *Race Discrimination*

Plaintiff alleges that defendant committed race discrimination in failing to promote him to assistant chief engineer. Generally, the plaintiff must prove the following specific elements in order to establish a prima facie case of discrimination: (1) plaintiff was a member of a protected class; (2) plaintiff was qualified for the position he sought or was performing competently in the position he held; (3) plaintiff suffered an adverse employment action; and (4) some other circumstance that suggests a discriminatory motive. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355 (*Guz*); *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1038.)

In order to prevail on this claim, plaintiff bears the burden of proving that defendant engaged in intentional discrimination against him. (*Heard v. Lockheed Missiles & Space Co.* (1996) 44 Cal.App.4th 1735, 1748; see also *Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 195 [plaintiff-employee must prove that defendant-employer "harbored a discriminatory intent"].) An employer is not required to have a good reason for its decisions; it can fire an employee, or decline to promote that

employee, for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, so long as its action is not for a discriminatory reason. (*Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 344; see also *Slatkin v. University of Redlands* (2001) 88 Cal.App.4th 1147, 1157 [a personal grudge can constitute a legitimate nondiscriminatory reason for an adverse employment decision].)

In the instant case, plaintiff theorizes that he was denied the promotion that was given to Yerunkar because plaintiff is African-American. In support, plaintiff bases his argument upon his opinion that he was more qualified for the position than Yerunkar. But, as the trial court aptly noted, other than plaintiff's unfounded belief, there is no evidence whatsoever of racial discrimination. Even if plaintiff were more qualified than Yerunkar, that assumed fact is not evidence of discriminatory animus. Absent evidence that Mendoza treated plaintiff differently because of his race, plaintiff did not meet his burden at trial. (*Guz, supra*, 24 Cal.4th at p. 361.)

In his appellate briefs, plaintiff repeatedly asserts that defendant's witnesses lied about him and about Yerunkar. Their lies, he claims, are evidence of pretext. The problem for plaintiff is that evidence of lying alone does not establish plaintiff's prima facie case; in order for alleged dishonesty to support a claim of pretext, there must still be evidence of each of the elements of plaintiff's prima facie case. "In an appropriate case, evidence of dishonest reasons, considered together with the elements of the prima facie case, may permit a finding of prohibited bias." (*Guz, supra*, 24 Cal.4th at p. 356; see also *Washington v. Garrett* (9th Cir. 1994) 10 F.3d 1421, 1434.) However, "an inference of intentional discrimination cannot be drawn solely from evidence, if any, that the company lied about its reasons. The pertinent statutes do not prohibit lying, they prohibit discrimination. [Citation.] Proof that the employer's proffered reasons are unworthy of credence may 'considerably assist' a circumstantial case of discrimination, because it suggests the employer had cause to hide its true reasons. [Citation.] Still, there must be evidence supporting a rational inference that *intentional discrimination, on grounds prohibited by the statute, was the true cause* of the employer's actions." (*Guz, supra*, at pp. 360–361.)

Because plaintiff offered no evidence at trial of defendant's discriminatory motivation, defendant was entitled to judgment on this cause of action.

### III. *Retaliation*

To establish a prima facie case of retaliation, a plaintiff must show (1) that he was engaged in protected activity, (2) that his employer subjected him to an adverse employment action, and (3) a causal link between the protected activity and the employer's action. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1044.) As applied here, plaintiff had to prove that the filing of a grievance in 2007 was the motivating reason in the decision not to promote him. (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 472–473.)

There is no evidence whatsoever to support plaintiff's assertion that he was retaliated against for filing a complaint against Mendoza.<sup>2</sup> Again, plaintiff's theory is that because he complained about Mendoza and did not receive the promotion, he must have been the victim of retaliation. But, plaintiff's speculation is not evidence. (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 386.)

### IV. *Motion for New Trial*

In light of our conclusion that the trial court rightly granted defendant's motion for JNOV, we need not reach the issue of whether the trial court also properly granted defendant's motion for a new trial.

---

<sup>2</sup> Curiously, while plaintiff complained that Mendoza was favoring and grooming Van Zuilen for the promotion, Van Zuilen also did not receive the promotion.



## DISPOSITION

The judgment of the trial court is affirmed. Defendant is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
CHAVEZ

\_\_\_\_\_, J.\*  
FERNS

---

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.